

# Regulatory Impact Statement

## Freshwater reform: Governance

### Agency Disclosure Statement

This Regulatory Impact Statement (RIS) has been prepared by the Ministry for the Environment and the Ministry for Primary Industries.

This RIS provides a high level analysis of options to reform the freshwater governance and decision-making system, which is one element of a water reform strategy. The RIS outlines a preferred model for an improved freshwater governance and decision-making system for inclusion in a discussion document on a strategy for water reform. This discussion document is expected to be released for public consultation in February 2013.

Cabinet is not being asked to make final decisions at this time. Consultation in February 2013 will provide further information and design detail, and inform recommendations to Cabinet in May 2013 on a strategy for water reform.

The preferred option for reform of the governance and decision-making system focuses on three foundation elements: a stronger role for central government to provide national direction and guidance and effective reserve powers for intervention in local government processes; a flexible collaborative planning process as an optional alternative to the existing Resource Management Act, Schedule 1 planning process; and a clear role for iwi/Māori in freshwater governance. All options were informed by the reports of the Land and Water Forum (the Forum), the input of the Iwi Leaders Group, and by officials' analysis to date.

A key assumption of the analysis to date is that good planning outcomes are more likely to be achieved through a collaborative planning process, which enable a range of values and interests to be better represented in the planning process. An assumption of the preferred option for reform is that a flexible collaborative planning process is more likely to be taken up by councils than a prescriptive collaborative process, as it enables councils to accommodate their regional circumstances. The preferred option also assumes that a flexible collaborative planning process would be supported by a comprehensive package of implementation support provided by central government.

While the Forum comprised a wide range of diverse stakeholders who discussed the potential options to reform the governance system, until wider consultation is carried out, officials have needed to rely on some anecdotal evidence. This has been done on the basis that Cabinet is not being asked to make final decisions at this time, and that consultation in February 2013 will provide an opportunity for officials to test the anecdotal evidence, which will inform future advice to the government on a strategy for reform.

The final recommendations for the implementation of a water reform strategy, which will include recommendations to improve the freshwater governance and decision-making system, will be presented to Cabinet in May 2013.



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Date 28/11/12

## Status quo and problem definition

### Status quo

#### Background

Fresh water is essential to New Zealand's economic, environmental, cultural and social well-being. Fresh water gives our primary production and tourism sectors their competitive advantage in the global economy. Fresh water is highly valued for its recreational aspects and it underpins New Zealand's biodiversity and natural heritage. Fresh water has deep cultural meaning to all New Zealanders. Many of New Zealand's lakes, rivers and wetlands are iconic and well known globally for their natural beauty and intrinsic values.

In 2009, the government commenced a reform of freshwater management which included: advice from the Land and Water Forum (the Forum); engagement with iwi through discussions with an Iwi Leaders Group; and, a comprehensive work programme that included further work on the National Policy Statement on Freshwater Management 2011 (NPS-FM).

In May 2011, Cabinet approved a three tranche programme for designing and implementing an improved freshwater management regime, including:

- a. tranche one – gazetting the NPS-FM and establishing the Fresh Start for Fresh Water (FSFW) Clean-up Fund and Irrigation Acceleration Fund
- b. tranche two – setting limits for water quality and quantity, including governance arrangements for freshwater planning processes. The Forum provided its report on these matters to Ministers in April 2012
- c. tranche three – how to manage within limits, including allocation mechanisms and additional tools to manage the effects of land use, and consideration of a national freshwater strategy. The Forum provided this report to Ministers on 1 November 2012.

This RIS is focused on improvements to the freshwater governance system, which relates to tranche two of the FSFW. Further papers and advice are being prepared on the other elements, and will also be included in the February 2013 discussion document.

#### Current water management framework

The Resource Management Act 1991 (RMA) sets the regulatory framework for freshwater management in New Zealand, under which regional councils are responsible for freshwater management. They give effect to their responsibilities through regional policy statements, plans and resource consents. In addition, industry initiatives and agreements between a number of stakeholders and organisations to address water quality issues are also emerging.<sup>1</sup>

Under the RMA, central government can be involved in water management in a number of ways, including gazette of National Policy Statements and National Environmental Standards (NES)<sup>2</sup>, making submissions on regional council plans and issuing water conservation orders (WCO).<sup>3</sup> Central government also has a large number of intervention tools under the RMA and Local Government Act (LGA), such as the power to call-in plans to a Board of Inquiry, or direct a council to prepare a change to a specific part of an operative or notified plan.

1 For example, the Dairying and Clean Streams Accord, developed in 2003 to address increasing concerns about the negative environmental impacts of dairying on stream water quality through setting five performance targets.

2 National Environmental Standards are prepared under section 43 of the RMA and prescribe technical standards, methods or requirements.

3 Water Conservation Orders can be placed on water bodies in order to sustain their 'outstanding amenity or intrinsic values'. WCOs can control the quantity of water abstracted and minimum standards for water quality can be prescribed which regional councils are bound to uphold.

In 2011, the NPS-FM was gazetted. It provides central government direction to regional councils on water management. Amongst other things, councils are required set objectives for water bodies in their regions, and set limits to ensure that objectives are achieved. Regional councils can choose to give complete effect to the NPS-FM by 31 December 2014, or if this is "impracticable", by no later than 2030.

#### Linkages to other government reform programmes

Freshwater governance reform is linked closely to Phase Two of the resource management reforms and local government reforms. The key overlaps are:

- resource management reforms are focusing on improving the RMA planning system.
- the Better Local Government reforms include proposals to:
  - improve local government planning processes (the Local Government Efficiency Taskforce is due to report by 30 November 2012)
  - expand the powers of central government to assist or intervene in situations where local authorities are significantly failing to perform their roles and functions
  - investigate options for a local government performance monitoring and improvement regime (as part of the cross-agency Housing Affordability work programme).

A strategy for water reform will be delivered together with reforms to the RMA in 2013 and any recommendations stemming from the review of the Environment Court. Officials are working together across teams to ensure that proposals for reform are linked and coordinated to provide cohesive advice to Cabinet. Changes to the timeframe for delivery of legislation in 2013 will have implications for the delivery of a water reform strategy. Conversations between Ministers and officials are occurring regularly to ensure that the consequences and implications of any changes are considered.

Local Government reforms, while linked are not considered likely to impact on the timing or nature of decisions relating to water or RMA reforms. Officials are working closely with the Department of Internal Affairs (lead agency) to ensure coordination of the respective reform programmes where relevant.

#### **Symptoms of the problem**

One element of the current water management framework is the governance system – which includes who makes decisions, how, and about what. Problems with the governance framework have manifested in poor quality planning, for example:

- inadequate analysis of impacts of plan provisions, and the values and interests of the community can have serious economic, social and cultural regional effects.
- dissatisfaction that the outcomes of planning processes do not recognise and provide for the full range of interests and values (a key point identified in the Forum's first report), including those of FWM/Māori
- a lack of robust management provisions in plans (e.g. clear objectives and limits) adds significant uncertainty and costs to the resource consent stage, where issues are re-litigated consent-by-consent. This creates significant investment uncertainty and compliance costs e.g. the cost of the resource consent application for the Central Plains Water Scheme was estimated at \$15 million and it took 11 years from lodging the consent application to final approval

- excessive delays in plans create significant compliance costs for councils and participants, and can result in plans that are out of date by the time they are finished. For example, Variation 6 to the Waikato Regional Plan took six years from notification to being operative, and the costs to Horizons Regional Council of the One Plan process are approximately \$9.4 million (excluding costs to the Courts, submitters and appellants)
- significant costs to clean up and restore environmental degradation arising from poor water management, for example \$450 million has been allocated to the clean-up of Lake Taupo, the Rotorua Lakes and the Waikato River.

In an effort to mitigate some of the above problems, some councils such as Environment Canterbury have proactively attempted to implement a more collaborative approach to freshwater planning to implement the Canterbury Water Management Strategy. However, the incentives in the current governance system have made this difficult e.g. de novo appeal rights do not incentivise early, good faith engagement in a collaborative process.

In monitoring the implementation of the NPS-FM, all regional councils have been found to be meeting or exceeding the pre-statutory consultation requirements specified in Schedule 1 of the RMA; 10 councils will (or are intending to) exceed RMA requirements using mixed-stakeholder forums to inform plan changes. However, several recent plan changes<sup>4</sup> have proved controversial with stakeholders who consider some councils are failing to adequately take into account the economic implications of plan changes, the feasibility of achieving plan requirements (e.g. managing within nutrient limits) and the speed of plan development, increasing the likelihood that decision-making will not be informed by suitably rigorous analysis of the implications of all options on all relevant interests.

## **Causes of the problem**

### *A systemic problem*

Freshwater governance is complex and systemic, different aspects of the problem interact and combine in such a way that cannot easily be untangled. Causes of the problem are outlined below and interact to form a system where councils struggle to manage freshwater resources.

### *Lack of central government direction, guidance and support on freshwater management*

Until the implementation of the NPS-FM, there was little central government direction on freshwater priorities and there remains a lack of central government direction and clear expectations required for good, transparent decision-making at the regional level. For example, there is limited guidance on how to articulate outcomes for water bodies and the environmental states required to achieve desired outcomes, both of which are required under the NPS-FM.

While a large number of central government intervention tools exist under the RMA and LGA, there are poor incentives for central government to use some of these tools because:

- there are not clear criteria for their use – the powers are very open ended without clear triggers for when central government should become involved
- central government has not set clear expectations about national values and good decision making processes, which means there are limited “hooks” to justify when central government intervention is warranted.

### *Lack of information and incentives to support good decision-making*

Councils can struggle to engage effectively with their community and to get the information needed to inform decision-making, and there is a lack of incentives to reach consensus on conflicting matters such as economic analysis, science or Mātauranga Māori, particularly

<sup>4</sup> Such as Environment Southland's "plan Change 13"; Otago Regional Council's "Plan Change 6a"; Environment Canterbury's "Proposed Land and Water Regional Plan" and Horizons-Manawatu Proposed One Plan.

where uncertainty exists. Arguments over the science can become a proxy battleground for the different values and interests at stake e.g. opposing scientific arguments were characteristics of the 'planning stalemate' in Canterbury.<sup>5</sup>

#### *Regional council capacity and capability*

The lack of central government direction, the complex and politically contentious nature of freshwater management, growing resource pressure, and a lack of information and incentives in the governance system to resolve conflicts and reach trade-offs means that councils struggle to obtain the capacity and capability to make good decisions, e.g. lack of technical capacity to carry out economic analysis necessary to set limits, or a lack of resources to pay for the modelling and science required to feed into decisions.

#### *De novo appeal rights*

De novo appeal rights act as a disincentive for early engagement in the planning process. This is because work to reach consensus or resolve issues (i.e. conflicting science) and manage competing values etc in the planning process can be considered afresh and 'unpicked' in appeals to the Environment Court.

#### *Social, economic and physical conditions in relation to fresh water vary greatly across regions and seasons*

Water management issues vary greatly across New Zealand, over time and with different seasonal and climatic conditions. For example, the Canterbury region has multiple catchments, high pressure on the resource and legacy issues to resolve. Other regions, such as Northland and Gisborne, have small rating bases and capacity and capability challenges. These variations mean there is no "one size fits all" formula for identifying problems and solutions, nor is there "one size fits all" central government direction and support. This issue is compounded by a lack of central government direction on matters of national importance or significance, which inhibits councils from solely focusing on regional and catchment specific water management.

### **Objectives**

The objectives below build on the national objectives specified in the NPS-FM (while focusing specifically on the governance system) and the problems identified above. Given the complexity of water governance issues, it is necessary to have objectives that cut across multiple aspects of the problem, and work collectively to reinforce an improved system that addresses the problems identified and supports councils to effectively implement the NPS-FM.

#### *Objective 1: A governance system that ensures decisions are made at the appropriate level*

For the governance system to deliver desired results, decision-makers need to have support and guidance, and it needs to recognise that the nature of some decisions will be region-or catchment-specific and are therefore best made regionally; while others will be broader, or of national interest and importance (i.e. not specific to regions or catchments) and best made by central government.

#### *Objective 2: A governance system that balances the values and interests of iwi/Māori, stakeholders and the public*

For the governance system to deliver desired results, a balance is needed between the diverse range of values and interests (including environmental, social, economic and cultural) that apply to a water body. This results from a process that engages people representing a range of values and interests. It also results from providing an appropriate forum and incentives for information and views to be articulated, and for competing values and interests to be resolved.

#### *Objective 3: A governance system that provides iwi/Māori with an effective voice in water*

<sup>5</sup> Referred to in the Response to the Review of Environment Canterbury RIS: <http://www.mfe.govt.nz/laws/ris/ris-ecan.html>

*management and that recognises regional differences and Treaty settlements*

For the governance system to deliver desired results, it should provide a clear role for iwi/Māori involvement and consideration of their rights and interests in freshwater governance. It is also important that the system has some flexibility to cater for variation between different iwi/Māori and to accommodate Treaty settlement arrangements.

*Objective 4: A governance system that produces high quality decisions*

Confidence in decisions is supported by a governance and decision-making system that: engages people representing a range of values and interests; provides an appropriate forum and incentives for information and views to be articulated; and for values and interests to be resolved. Decision-makers need to have appropriate skills and experience to match the significance of the decisions. The decision-making process needs to be transparent and there needs to be accountability for decisions. Confidence also requires a safety-net to address poor process and decisions.

*Objective 5: A governance system that enables efficient and practical plan development*

The timeliness of plan development and decision-making should consider the total time from commencement of plan preparation until a final plan is adopted by a regional council. Considerations about cost should include implications for regional councils, iwi/Māori, key stakeholders and the general public.

The practicality of implementing decisions depends on stakeholders' willingness and ability to participate in a new governance and decision-making system, and on the level of stakeholder acceptance and buy-in to decisions.

## **Options not included in this RIS**

Officials' analysis, supported by the Forum, identifies that fundamental changes to the underlying freshwater governance system are not necessary, and would not, on their own, address the underlying problems identified above. In fact, fundamental changes (such as removing regional councils and establishing a central government body to manage water resources) may create new issues, such as decision-makers not being well-informed of community values and interests. Accordingly, options that require fundamental changes are not included as part of this RIS.

## **Regulatory impact analysis**

Options for assessment were generated by:

- outlining options for achieving objectives
- combining options into packages (including the recommendations of the Forum), so that the relative merits of the packages can be assessed against objectives.

The choice of packages largely reflects a continuum between minimal changes from the status quo (good practice guidance) through to more substantial changes (changes to the statutory framework). This gives a sense of the range of options and their relative impact.

Likely magnitude of marginal costs and benefits (both in time and money) are expressed as small, medium, or large.<sup>6</sup> The likely magnitude takes into consideration the cumulative impacts of costs and benefits across multiple councils and/or catchments, which may be small when considered individually but add up to something much larger.

Each of the option packages are described below, and then assessed in subsequent tables. Common costs and benefits, risks and assumptions are outlined in the following section.

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<sup>6</sup> Uncertainty around, and limitations of, available quantitative data mean that it is difficult to quantify magnitude at this stage, however, the qualitative descriptors indicate estimates of: small - less than \$500k; medium - \$500k-\$1.5m; large - \$1.5m-\$3m.

### **Package 1: Enhanced Status Quo**

1. This package involves central government providing non-legislative measures such as written guidance, methodologies and support to councils on planning and decision-making processes, for example, how to facilitate a successful collaborative planning process or how to carry out economic analysis. Councils would continue to use the existing RMA Schedule 1 process to prepare, change or review policy statements and plans.
2. In addition to non-legislative measures, central government would make greater use of existing reserve powers (outlined in section 25 of the RMA) and tools (such as NPSs and NESs) to provide direction and support to councils, and direction where councils are not exercising or performing their functions, powers or duties under the RMA.
3. Councils would retain responsibility for all stages of the planning process, and de novo appeal rights would be retained.

### **Package 2: Formalised Collaborative Planning (Forum proposal)**

1. This package would establish a statutory collaborative planning process as an **optional alternative** to the existing planning process in Schedule 1 of the RMA. The collaborative planning process would be prescriptive with respect to the specific process steps, methods and principles of the collaborative planning process.
2. In consultation with the community, iwi/Māori and other stakeholders, if councils select the optional collaborative planning process, they would be required to establish a collaborative stakeholder group (appointed by regional council), with iwi/Māori representation. Their function would be to draft regional plans.
3. Once drafted and publicly notified for comment, an independent panel with iwi representation would be appointed by council to assess the rigour of the draft plan, the process through which it was developed, hear public submissions and facilitate mediation between parties.
4. The panel would make recommendations to the council on whether the evidence and arguments raised in submissions, or outcomes of mediation, justify any changes to the draft plan. There would be a statutory presumption that the council's draft notified plan is sound, and that clear justification is required to recommend changes.
5. Councils, with the involvement of iwi would retain responsibility for decision-making, making explicit where they depart from the position of the collaborative stakeholder group or the independent panel.
6. Appeal rights would be restricted to points of law to the High Court, or on merit on the grounds that the council decision did not give effect to the consensus position of the collaborative stakeholder group, or will have material implications for a matter or matters of national significance. In granting an appeal on merit, the Environment Court would need to consider an appellant's participation in the planning process thus far i.e. whether an appellant sought but did not gain entry to the collaborative stakeholder group and attempted to pursue matters during the independent hearing process.

### **Package 3: Flexible Collaborative Planning**

1. Under this package, central government would:
  - a. provide clear national direction
  - b. ensure that the national interest, and statements of central government policy, are articulated and provided for in regional council decision-making
  - c. specify good practice processes, tools, methodologies, and decision-making considerations
  - d. provide guidance and support for implementation of the governance system
  - e. monitor, evaluate and review the effectiveness of the governance system.

2. Central government would also have a more effective ability to intervene in regional planning processes through existing or modified powers under section 25 of the RMA where councils are not adequately providing for nationally set expectations and policy. As noted in the problem section, a large number of intervention tools exist already under the RMA and LGA but there are poor incentives to use some of these tools.
3. This option would amend current powers to:
  - a. clarify the criteria for their use: the Minister in deciding to exercise the power must consider whether the plan in question is adequately providing for central government direction and expectations, e.g. matters contained in formal or statutory instruments under the RMA
  - b. enable the Minister to specify the matters the regional council must consider when developing the plan change or variation. These matters would be linked directly to central government direction and expectations, e.g. a council could be directed to prepare a plan change that specifically provides for matters in a National Policy Statement.<sup>7</sup>
4. This package would establish a statutory collaborative planning process as an **optional alternative** to the existing planning process in Schedule 1 of the RMA. The process would not prescribe every step that councils would need to take in developing a plan. However, some matters would be specified as statutory "bottom lines", including statutory requirements that:
  - If councils take a collaborative approach to developing a plan to notification, they affected parties, stakeholder, communities and iwi/Māori early to jointly develop policy options and solutions
  - councils appoint one or multiple stakeholder groups to give advice to council in development of the plan. If appointing more than one group, it would be important to clearly define and separate their roles, e.g. a region could have multiple stakeholder groups representing different catchments or sub-catchments. There would be a statutory requirement that the stakeholder group(s) be required to represent the broad range of interests affected by the plan change, with a guaranteed place for iwi/Māori to participate alongside other stakeholders
  - councils set a terms of reference for the process including as a minimum the process for how the council and stakeholder group(s) work together to engage with the wider community, the nature of advice being sought from the stakeholder group(s), clear timeframes and deadlines for processes, and safety nets to deal with a dysfunctional process.
5. A panel comprising a majority of non-council commissioners, appointed by council would assess the rigour of the draft plan, the process through which it was developed, hear public submissions and facilitate mediation. Iwi would have the opportunity to nominate a member to the panel.
6. ~~The panel would make recommendations to the council on whether the evidence and arguments raised in submissions, or outcomes of mediation, justify any changes to the notified plan. There would be a statutory presumption that the council's notified plan is sound, and that clear justification is required to recommend changes.~~
7. Councils would retain responsibility for decision-making, though would be strongly guided by the recommendations of the collaborative stakeholder groups and the independent panel. There is a range of options for the role of iwi/Māori in the final decision, from an advisory role with some statutory weight through to co-governance with the council.

<sup>7</sup> We also note the Better Local Government review is considering expansion of the powers of central government to assist or intervene in situations where local authorities are significantly failing to perform their roles and functions.



8. Appeal rights would be restricted, available on re-hearing, where council decisions deviate from recommendations of the hearings panel.

#### **Package 4: Decision-making Reform**

1. Under this package, regional councils would retain responsibility to draft and publicly notify the draft plan in accordance with the existing planning process in schedule 1 of the RMA.
2. Councils would then have the option of a new independent process to hear submissions, or use the default schedule 1 process.
3. If the new process is selected, once submissions have been received, the Minister for the Environment would be responsible for appointing an independent chair from a national pool of chairs (also appointed by the Minister). The Chair would then appoint a panel with a mix of independent experts and elected regional councillors to hear submissions, including cross-examination. Iwi would have the opportunity to nominate a member of the panel.
4. The panel (not council) would be responsible for making and notifying the final decision.
5. Appeals would be available on points of law to the High Court only.

#### **High level assessment of option packages against objectives**

The below table summarises an assessment of the option packages against the objectives outlined earlier in this document. '+++' indicates substantially better than status quo; '++' better than status quo; '+' slightly better than status quo; and '0' indicated no change compared to the status quo.

Assessment of option packages against objectives

Package	Obj 1- Decision making	Obj 2- balance of values	Obj 3- w/ Maori	Obj 5- confidence	Obj 6- efficiency & practicality	Key points
1. Enhanced status quo	+	+	+	○	○	<ul style="list-style-type: none"> <li>Improvements to the status quo are dependent on councils choosing to follow guidance provided by central government and to be more collaborative in their planning process</li> <li>Risk of little uptake of collaborative planning given it does not have any statutory effect and the existing RMA Schedule 1 requirements would still apply</li> <li>Potential improvement to the quality of decisions, including the balance of values, due to greater central government direction</li> </ul>
2. LAWF collaborative model	++	++	++	++	+	<ul style="list-style-type: none"> <li>Improvements to the status quo are dependent on a council choosing to follow the optional collaborative planning process however it is considered more likely in this option given it has statutory effect</li> <li>Increased confidence in decision making, stemming from prescriptive collaborative process, balancing different values and independent panel adding input and greater transparency to decision making process</li> <li>Clear role for w/ Maori in process collaborative group and independent panel</li> <li>Efficiency gains from reduced appeals</li> </ul>
3. Flexible collaboration model	+++	++	++	++	++	<ul style="list-style-type: none"> <li>Improvements to the status quo are dependent on a council choosing to follow the optional collaborative planning process however it is considered more likely in this option given it has statutory effect</li> <li>Greater central government direction, ensuring matters of national importance/significance are made nationally supported and guidance of councils to improve the quality of decisions</li> <li>Increase of confidence in decision making, stemming from collaborative process balancing different values</li> <li>Independent panel adding input and greater transparency in decision making</li> <li>Flexibility for councils to design some elements of the collaborative process to accommodate regional circumstances enhancing efficiency and practicality</li> <li>Clear role for w/ Maori in collaborative group process</li> <li>Efficiency gains from reduced appeals</li> </ul>
4. Decision making reform	○	○	+	○	++	<ul style="list-style-type: none"> <li>Efficiency gains through faster decisions on plans and appeals restricted to points of law</li> <li>Risk of poor stakeholder and regional council participation in independent process impacting the quality of decisions</li> <li>Clear role for w/ Maori on independent panel</li> <li>Reduced transparency and confidence in decisions</li> <li>Lack of accountability for decisions</li> </ul>

## Assessment of options

### Option package 1 – Enhanced status quo (non-legislative)

#### Description of option

Central government provides non-legislative measures to assist/support councils to improve planning processes and decision-making, such as guidance on how to carry out a collaborative process, carry out economic analysis etc. Central government uses existing powers to provide greater national direction to councils. Councils retain responsibility for all stages of the planning process, and de novo appeal rights would be retained. The costs and benefits to council and participants below largely stem from a council selecting to take a more collaborative approach to planning, which would be optional, and only supported by central government guidance.

#### Assessment of impacts

Costs	Likely magnitude	Evidence
Cost to central government to develop guidance and provide support	Small-medium	Preparing guidance notes for the Quality Planning website is generally between \$40,000-\$100,000 per note. However, guidance on how to establish, manage, and participate in a collaborative process is likely to be more complex and therefore more costly. As an example of costs to develop an NES, the cost of the NES for assessing and managing contaminants in soil to protect human health has been estimated at \$600,000
Cost to regional councils to implement a collaborative planning processes	Medium (in cost and time)	Financial costs to Environment Canterbury for the CWMS were on average \$250,000 per zone, p.a. (\$2.5m p.a. for 10 zones). The main costs were approximately \$150,000 for facilitation staff, \$40,000 for information and expertise, and \$40,000 for honoraria and travel. Honoraria for CWMS zone committee members were set at \$2000 p.a. generally, but \$4,000 for 2011. Water management in the Canterbury region is highly complicated, and costs in other regions may be less. The above costs are not 'new, or marginal costs – i.e. they must be considered against the current costs of the existing planning process e.g. the Waikato Regional Council estimates that in respect of the Proposed Regional Policy Statement hearings and appeals process, that the costs and time to notification are \$4.1m and 3 years respectively <sup>8</sup> . It is expected that consultation in February 2013 will identify further evidence on the expected costs to establish and support collaborative processes.
Costs to participants to engage in collaborative process (i.e. time and money)	Small <sup>9</sup> monetary cost, medium/large time	As an indicator of input required from stakeholders to participate in the CWMS, the number of meetings ranged from less than 20 meetings for the Upper Waitaki zone to 60 meetings for the Hurunui-Waiatu zone, with meetings generally lasting 4-6 hours. An extreme example is a collaborative stakeholder group in Canterbury that met more than fifty times in one year. The above costs are not 'new' or marginal – they should be considered against the costs of participating in the existing planning process, which include legal representation, making submissions, participating in mediation and appeal processes etc. It is expected that consultation in February 2013 will identify further evidence on the expected costs to participate in collaborative processes

<sup>8</sup> Dormer, A., V. Payne 2011: Improving RMA decision-making: prescription for reform, pp 2-3

<sup>9</sup> This impact of this cost is assessed as small by the scale outlined in footnote 6 i.e. less than \$500k. However to an individual participant, attending 60 meetings, each lasting 4-6 hours – the magnitude of time is significant.

<p><b>Benefits</b></p> <p>Benefit to councils and participants arising from greater information and evidence tabled early, reducing the number of matters to be resolved through submissions and hearings</p>	<p>Small-medium</p>	<p>Increased information and evidence tabled early in the planning processes is expected to lead to greater resolution of issues during the planning process, which is expected to reduce the numbers of submissions and lengthy hearings that have been experienced under the status quo, such as: Freshwater variations to the Canterbury Natural Resources Regional Plan involved over 1,000 submissions and 74 council hearing days.<sup>10</sup> Variation 5 (Lake Taupo Catchment) to the Waikato Regional Plan involved 136 submissions and 20 council hearing days.<sup>11</sup></p>
<p>Benefit to councils and participants arising from increased quality and rigour of decisions, reducing the matters that require resolution through the courts and reduce delays</p>	<p>Small</p>	<p>A 2004 survey found that resolving appeals for RMA plans cost local government \$599,000 per plan on average, which equates to 27% of average plan development costs.<sup>12</sup> As an indicator of the cost of delays, the benefits of the Hunter Downs Irrigation Scheme are estimated at \$11.2m p.a. (farm output) and \$265m (processing and support). Costs from reduced appeals for participants could potentially be large, for example Horticulture New Zealand has spent \$120,000 appealing a decision on irrigation in the Matamata-Piako District.<sup>13</sup> A 2004 survey indicated the median number of appeals on plans from regional councils is 6, and 16 from unitary authorities. However, very few appeals resulted in an Environment Court hearing (presumably because the majority of appeals are withdrawn, settled or resolved through mediation).<sup>14</sup></p>
<p><b>Net impact</b></p> <p>This option would have small net benefit. While this option would be relatively low cost for central government and councils to implement, a lack of incentives (i.e. full merit appeals, and existing RMA Schedule 1 requirements) means that there is likely to be limited uptake of collaborative processes and therefore little change from the status quo. In particular, there is nothing under the status quo from preventing councils from being more collaborative, but there are few incentives to do so when decisions may be unpicked by appeals to the Environment Court. Greater central government guidance and support may increase the quality of decisions, but provision of guidance, and retaining elements of the current planning process, such as de novo appeal rights, is not likely to lead to the behaviour change required to deliver the objectives of reform.</p> <p><b>Risks</b></p> <p>Without statutory changes to incentivise collaboration, there may be very little uptake of collaborative planning, and consequently the current problems with the existing governance regime are likely to continue. There is a risk that there would be no change from the status quo with respect to iwi/Māori involvement in the planning process. In addition, there is a risk that collaborative processes, if not implemented and supported sufficiently by central government, could break down or be unsuccessful, which is likely to be inefficient and costly for councils and participants.</p>		

<sup>10</sup> Environment Canterbury (2010) Introduction to Decisions on the Natural Resources Regional Plan chapters 4 to 8 – Variations 1, 2, 4 and 14.  
<sup>11</sup> Environment Waikato (2007) Proposed Waikato Regional Plan Variation No. 5: Lake Taupo Catchment (Committee Recommendations) Hearings Committee Report to Council.  
<sup>12</sup> Boffa Miskell & Hill Young Cooper (2004) Improving Processes for Making Plans & Policy Statements under the Resource Management Act 1991.  
<sup>13</sup> Orchardist (April 2011) Water fight costly, but crucial.  
<sup>14</sup> Boffa Miskell & Hill Young Cooper (2004) Improving Processes for Making Plans & Policy Statements under the Resource Management Act 1991.

### Option package 2 – Formalised collaborative planning (Forum model) (legislative)

Description	
<p>Optional collaborative planning process: a collaborative stakeholder group (CSG), with iwi/Māori representation drafts regional plan. Statutory requirements outline the process, methods and principles of collaboration in detail. An independent panel assesses the rigour and development process of the draft plan, hears submissions and facilitates mediation. Councils retain responsibility for decision-making, guided by the recommendations of the CSG and the independent panel. Appeal rights limited to points of law or on merit when the decision of council will have material impact on matters of national significance, or when linked to participation early in the planning process or where council deviate from recommendations of the independent panel or collaborative stakeholder group.</p> <p>The costs and benefits to council and participants below largely stem from a council selecting to take a more collaborative approach to planning, which would be optional.</p>	
Assessment of option	
Costs	Evidence
Likely Magnitude	
Cost to regional councils to implement a collaborative planning processes and independent panel process	Medium
Costs to participants to engage in collaborative process (i.e. time and money) and independent panel process	Small cost large time
Limited flexibility for councils to design own process	Medium
Increased likelihood of judicial review	Medium
Benefits	
Benefit to councils and participants arising from increased use the collaborative process resulting in greater information and evidence tabled early in the planning process	Small-medium

Values and interests of iwi/Māori are captured in the collaborative stakeholder group and independent panel	Small	A clear role for iwi/Māori in the collaborative stakeholder group enables them a greater opportunity to put forward their views, clarify Mātauranga Māori etc. Capturing their views in the collaborative process will result in fewer grievances to be resolved case-by-case through Treaty settlements. This will be tested further in consultation.
Rigour and greater confidence in final decisions of council due to independent panel – this will likely also lead to decreased appeals benefiting both councils and participants	Medium	Increased confidence in initial decisions, leading to decreased appeals – see package 1 benefits from reduced appeals.
Councils retain ultimate responsibility for decisions	Small	This maintains local democracy and accountability.
<b>Net impact</b>		
This option would likely result in medium net benefits to councils and communities in the medium to long-term. It is expected that there would be increased uptake of the collaborative process given it would have formal status in legislation and councils would be required to provide justification if deciding not to use it. Short-term costs associated with establishing, supporting and participating in a collaborative process, or the independent panel may be medium to high. However, these costs are expected to be off-set by savings in the medium to long term, arising from improved quality and durability of decisions leading to improved planning outcomes and less contention in the resource consent process. It is likely that costs associated with the independent panel may be small for some councils who already use hearing panels prior to final decisions. It is noted that while there are expected to be cost savings as a result of reduced appeals, there may be increased costs associated with judicial review.		
<b>Risks</b>		
The prescriptive nature of the model may deter councils from using the collaborative process, or they may struggle to implement it successfully, resulting in increased judicial review, and increased costs to councils and participants. There is a risk that councils will struggle to implement the collaborative model successfully without central government direction, guidance and support. This may result in limited improvements to the status quo and increased timeframes and costs.		

### **Option package 3 – Flexible collaboration planning – (legislative)**

<b>Description</b>	Central government would be responsible for setting national policy and objectives for water management, and taking an active and adaptive approach for assisting or intervening in local government processes as required. An alternative collaborative planning model, if used, would require the establishment and use of one or multiple CSG. Some statutory requirements for the collaborative process would be prescribed in legislation as “bottom lines”. A majority independent panel would assess the quality and development process of the draft plan, hears submissions and facilitate mediation. Councils retain decision-making responsibility, guided by CSGs and the independent panel. Appeal rights are restricted, available on re-hearing, when council deviates from recommendations of the collaborative group or the hearing panel or when an appellant participated in good faith in collaborative processes and in the independent hearing. The costs and benefits to council and participants below largely stem from a council selecting to take a more collaborative approach to planning, which would be optional.
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Assessment of option		
Costs	Likely magnitude	Evidence
Cost to regional councils to implement a collaborative planning processes	Medium	As above, option package 1 – costs. These are expected to be higher than the costs outlined in package 1, but are expected to be lower than the costs of package 2, as there are fewer statutory requirements and more flexibility associated with this option. Anecdotal comments from two councils indicate that a less prescriptive collaborative model, coupled with increased central government direction, and guidance would be easier and less costly to implement than a very prescriptive model, as per package 2.
Cost to central government to develop direction, guidance and provide support	Medium-large	As an example, costs to develop the NES for assessing and managing contaminants in soil to protect human health have been estimated at \$600,000. Preparing guidance notes for the Quality Planning website is generally between \$40,000-\$100,000 per note. Greater central government direction, guidance and support would be required than for package 1 (which also provides national direction, support and guidance) as this option presents a far stronger role for central government than package 1.
Costs to participants to engage in collaborative process and independent panel (i.e. time and money)	Small monetary cost, large time	As above, option package 1 – costs
Increased likelihood of judicial review	Small	It is noted that costs associated with an independent panel process could expect to be equivalent to current hearings panel processes already carried out by councils.
<b>Benefits</b>		
Benefit to councils and participants arising from increased use of collaborative process (relative to packages 1 and 2) resulting in greater information and evidence tabled early in the planning process	Medium-large	As above option 2 – costs – these costs are expected to be less than package 2 as, under this option, there is greater central government direction, guidance and support, and there is less prescription in the legislation resulting in fewer points where appellants could seek judicial review. Anecdotal evidence from councils suggests that a more flexible collaborative model will be more efficient and practical for councils to implement successfully (than package 2), enable them to capitalise on collaborative processes and groups already in place, and to design elements to accommodate regional circumstances and address regionally specific issues. Consultation in February will likely bring forth information evidence regarding this.
Benefit to councils and participants arising from increased use of collaborative processes resulting in greater information and evidence tabled early in the planning process	Medium-large	As above, option package 1 – benefits. The benefits of this option are expected to be larger than both packages 1 and 2 as the collaborative process in this package is considered more likely to be taken up than packages 1 and 2 as it is formally recognised in statute (unlike package 1), and provides flexibility for councils to accommodate regional circumstances (unlike package 2).
Benefit to councils and participants arising from increased rigour and greater confidence in quality of final decisions of council due to independent panel – will likely also lead to decreased appeals	Medium	As above, option package 1 – benefits Benefits are expected to be greater than for both packages 1 and 2 as this package encompasses both stronger central government direction on matters of national significance and greater support and guidance to support councils to make decisions on regional/catchment scale issues.

More effective ability for central government to intervene, earlier in planning processes leading to increased rigour in the planning process and greater confidence from participants and community in decisions	Medium	More effective ability to intervene in regional council processes should prevent situations such as Environment Canterbury (ECAN), where central government considered the only option was to remove the council, and replace it with Commissioners. Clarity regarding central government intervention, will ensure that central government can support councils where and when necessary (in a more timely manner), without being required to be 'an ambulance at the bottom of the cliff', where planning process have broken down (as in ECAN) before central government intervenes.
Values and interests of iwi/Māori are captured through the collaborative stakeholder group	Medium	A clear role for iwi/Māori in the collaborative stakeholder group enables them a greater opportunity to put forward their views. Capturing their views in the collaborative process will result in fewer grievances to be resolved case-by-case through Treaty settlements. Officials will test this further in consultation.
Councils retain ultimate responsibility for decisions	Small	This maintains local democracy and accountability for decisions.

**Net impact**

This option is likely to result in medium-large net benefits to councils and communities. While similar to option 2, larger net benefits are expected to arise from a strong role for central government providing national direction (including the ability to more effectively intervene in council processes where necessary), and guidance and support to councils and savings gained from the greater degree of flexibility in the collaborative process, making it more efficient for councils to implement. There is expected to be medium to large short term costs to central government to develop national direction, guidance and support, and medium costs to councils and participants to implement and participate in collaborative processes. These costs are expected to be off-set by efficiencies gained through implementation of a more flexible collaborative process, and improved quality and durability of decisions (leading to reduced appeal costs) arising from increased central government direction and independent testing of the plan. Benefits will also arise from greater confidence and community buy-in to decisions.

**Risks**

The option assumes that statutory collaborative planning process would be supported by a comprehensive package of central government direction, support and guidance. Without this, there is a risk that councils will struggle to implement the collaborative model successfully resulting in limited improvements from the status quo, and increased timeframes and costs.

**Option package 4 – Decision-making reform (legislative)**

**Description**

Regional councils retain responsibility to draft the plan and publicly notify it as per existing RMA Schedule 1 planning process. Councils have the option of a new independent process to hear submissions, or the default schedule 1 process. If new process is selected, once submissions have been received, the Minister for the Environment would appoint an independent chair from a national pool. The Chair appoints a panel with a mix of independent experts and elected regional councillors, and iwi representation. The panel hears submissions, carries out cross examination. The independent panel would make final decisions and notify them. Appeals would be limited to points of law to High Court only.



<b>Assessment of option</b>		
<b>Costs</b>	<b>Likely magnitude</b>	<b>Evidence</b>
Reduces local democracy, and accountability to the community for impacts of decision-making	Medium	An independent panel (or majority independent panel) would not be democratically elected and it is therefore difficult for communities to hold them to account for the decisions that are made and the consequences of those decisions.
Costs to councils and participants running and being involved in formal hearing process	Small	These costs are of low magnitude as councils and participants already invest significant effort into the hearing process, meaning a small marginal increase in costs for a formal hearings process
<b>Benefits</b> Time and cost savings to councils and participants from the avoidance of appeals and faster decision making on plans	Medium-large	The median timeframe for appeals on regional plans is 548 working days. <sup>15</sup> As an indicator of the cost of delays, the benefits of the Hunter Downs Irrigation Scheme are estimated at \$112m p.a. (farm output) and \$265m (processing and support). <sup>16</sup>
<b>Net impact</b> This option is likely to deliver small net benefit. The main potential benefit of this package are time and cost savings to councils and participants from faster decision making on plans, and the avoidance of appeals. However, this option may decrease transparency in decision-making, and reduce local democracy; by preventing communities from holding the independent panel to account for the decisions that are made (and the consequences).		
<b>Risks</b> There is a risk that more rigorous hearings could increase costs for stakeholders hence potentially excluding some from the process. There is a risk that some parties may have some loss of confidence in decisions due to the limited right for appeal. There also is a risk that parties whose interests have not been well considered in the decision have no recourse to the Court.		

<sup>15</sup> Brown & Pemberton (2008) Analysis of timeframes for the development of policy statements and plans under the Resource Management Act 1991.

<sup>16</sup> The AgriBusiness Group Hunter Downs – Reliability and Agricultural Impacts.

## Common costs and benefits of options

### Costs

#### Central government

- There will be costs to central government for the development of a comprehensive package of support and guidance for councils to establish and support collaborative processes, and improving their capability and capacity to make good decisions (packages 1 and 3). These costs (package 3) are likely to be of medium-large magnitude for government, and, although expected to reduce over time (for example as council capability and capacity increase) small costs are likely to be ongoing.

#### Councils

- There will be costs to councils to establish and run collaborative planning processes and establish independent panels which will include costs for facilitators, travel expenses, facilities etc (options 1 - 4). These costs range in magnitude for councils though could be expected to reduce over time, as they gain experience and become proficient at implementing collaborative processes. Some councils are attempting to use collaborative processes and already use hearings panels prior to decision-making – for these councils, the additional costs associated with implementing a collaborative process and supporting an independent panel are likely to be smaller than for councils who currently do not.

#### Participants/community

- Participants involved in collaborative planning and independent panel processes are likely to incur medium to large 'time' costs, rather than direct monetary costs. These costs are unlikely to reduce over time. There may be some who frequently engage in current consultation and appeal processes (under the existing schedule 1 planning process), for these people, marginal costs could expect to be smaller than those who currently do not.

### Benefits

#### Central government

- Improved regional water management will lead to reduced requirements to clean up and restore environmental degradation arising from poor water management, for example \$450 million has been allocated to the clean-up of Lake Taupo, the Rotorua Lakes and the Waikato River. These savings would be large in magnitude and achieved over the long term.

#### Councils

- Greater national direction and support for councils will result in greater national consistency and improved capability and capacity to carry out effective planning processes and make quality, durable decisions.
- Packages 2 and 3 propose a new collaborative planning model, as an optional alternative to the current RMA Schedule 1 planning process. Adapting a collaborative planning process is more likely to reflect the diverse range of community values and interests (including iwi/Māori) and is more likely to deliver community priorities in the medium to long term. While in the short term there may be increased costs to establish, support and participate in collaborative processes, such costs are considered likely to be off-set by improved quality and durability of decisions. This will result in greater confidence in decisions, leading to greater business and investment certainty. Successful collaborative processes are considered more likely to result in greater community buy-in to plans and decisions (because the community has been involving early in the planning process), and improve their implementation benefiting both councils and communities.

- Packages 2, 3 and 4 have restricted appeals which will result in medium to large benefit to both councils and participants, arising from reduced time and money spent resolving issues through appeals. This may mean plans become operative faster, providing business certainty and reducing delays to policy outcomes being achieved e.g. environmental improvements. It also prevents aspects of plans from being unpicked by the courts, which are not accountable to communities impacted by their decisions.

#### Participants/community

- Packages 2, 3 and 4 give iwi/Māori a greater role in the planning process. This will help to ensure their values and interests are considered and reflected in decision-making.
- Packages 2-3 require a majority independent panel to be involved in checking the quality of the plan and the process through which it was developed, consider submissions and facilitate mediation between parties. This is considered likely to increase the rigour of the collaborative process, improving the quality of decisions and give participants and communities greater confidence in final decisions.

#### Common assumptions and risks of packages

A key assumption is that the objectives of an improved governance system are more likely to be achieved through collaborative planning processes, which enable a range of values and interests to be better represented in the plan preparation process, and through providing a deliberative forum to better resolve competing values/interests. It is assumed that there will be greater use of, and success arising from, a flexible collaboration process, if formally recognised in statute while also supported by central government guidance and support.

While collaborative planning processes on their own are not a solution to all problems or a guarantee of better governance and decision-making, even when unsuccessful in reaching consensus or agreeing solutions, a collaborative process is still assumed to provide good information on the range of values and interests in the community, scientific information and evidence to the final decision-maker and lead to increased confidence in the quality of decisions.<sup>17</sup>

It is difficult to quantify the potential benefits of improved planning outcomes relative to the status quo. The potential benefits depend on a number of factors, including regional variations and the outcomes of collaborative planning processes on a case by case basis.

There is an assumption of low uptake of collaborative planning approaches without strong incentives for collaboration (e.g. formally recognised in statute, or via reduced appeal rights) and a comprehensive package of implementation support from central government. For example collaborative processes could be utilised by councils under the existing RMA Schedule 1 process, and while some councils are attempting to put in place such processes, this is sub-optimal when the investment and outcomes of a collaborative process can be unpicked in appeals to the Environment Court.

Package 4 assumes that an independent panel would be more effective at balancing values and interests and resolving conflicts than regional councils. While an independent panel making decisions may give some parties greater confidence in the decisions, there may be less opportunity for iwi/Māori, stakeholders and the public to engage with an independent panel and less transparency in decision-making. In addition, there is a risk to local democracy and accountability for decisions.

#### Consultation

The options presented in this RIS have been informed by the Forum's reports, input from the Freshwater Iwi Leaders Group and officials' analysis to date. Through the Forum, stakeholders from industry groups, environmental and recreational NGOs, iwi, scientists, and other organisations with a stake in freshwater and land management have led the

<sup>17</sup> The research undertaken by the Ministry for the Environment's Strategic Policy team supports this finding.

development of policy options for Government's consideration. There was extensive public engagement on the first report, which was reflected in the Forum's final advice to Ministers. The direction of the recommendations in the Forum's second report (May 2012) is consistent with the direction in the Forum's first report (September 2010).

Iwi/Māori have participated in the Forum process, and have also been in discussion with Government on iwi rights and interests in fresh water generally, through the Iwi Leaders Group and Iwi Advisors Group. These discussions have included the role for iwi/Māori in the freshwater governance system. This process is ongoing.

Further work and consultation will be important to test the understanding of the problems and the workability of the option proposed for inclusion in the February 2013 discussion document.

It is also important that further work is coordinated within the wider context of reform. The Resource Management reforms, the review of the Environment Court and the Local Government Act reform programme, for example, may help create solutions to some of the problems identified with water governance presently.

### Conclusions and recommendations

It is proposed that the discussion document on a water reform strategy outline package 3 as the preferred model to improve the freshwater governance system.

Package 1 is not considered likely to meet the objectives of reform as it results in only small net benefits arising from increased central government support and guidance, potentially leading to an improvement in the quality of decisions (objective 4). Package 4 is not considered likely to meet the objectives of reform as it results in only small net benefits arising from faster decisions on plans and restricted appeal rights, leading to plans becoming operative in a timelier manner (objective 5). Neither packages 1 or 4 are considered likely to achieve objectives 1, 2 or 3.

Packages 2 and 3 are similar with regard to their net costs and benefits (package 3 is largely an extension of package 2). Both provide an alternative (and optional) planning process that is expected to:

- enable councils to better balance values and interests of iwi/Māori, stakeholders and the public (objective 2) because they are more engaged early in the planning process
- give iwi/Māori an effective voice in freshwater governance (objective 3) because they are engaged early in the planning process
- increase the quality of decisions and confidence in decisions (objective 4) because the community are involved early in the planning process, bringing to the table information and evidence for consideration early, and because the independent panel adds a level of rigour to the plan
- lead to more efficient and timely implementation and operation of plans (objective 5), because the community have been involved in the process, and therefore have increased buy-in to final decisions. In addition, reduced rights to appeal mean that issues are mainly resolved through the collaborative process or through mediation facilitated by the independent panel.

However, there are two key advantages of package 3 that make it more likely to meet the objectives of reform (in particular objectives 1, 3 and 5):

- a strong role for central government providing national direction, guidance and support
- flexibility in the collaborative planning process.

These differences are elaborated on below.

### Leadership role for central government providing direction, guidance and support to councils

Package 2 does not provide a strong role for central government over and above the status quo. Conversely, package 3 provides a strong role for central government setting national direction, and developing guidance and support for councils when managing water resources. This central government direction means that decisions of national interest and importance will be made by central government creating greater national consistency, while councils can focus on regional or catchment specific decisions supported by a stronger national framework (objective 1). Furthermore, clarifying existing powers under the RMA for central government intervention mean that central government will be able to intervene in a more timely manner, when planning processes are beginning to break down, but can still be recovered, rather than as an 'ambulance at the bottom of the cliff' when processes have completely broken down.

In addition, it is expected that central government guidance and support, for example to carry out economic analysis, or on how to facilitate successful collaborative processes will lead to an improvement in the quality and durability of decisions made by councils. In turn, this will increase the confidence that communities have in decision-makers (objective 4).

### Flexibility in the collaborative planning process

Both packages 2 and 3 outline a similar collaborative planning process for water management as an optional alternative to the existing RMA Schedule 1 planning process. Both options recommend that the collaborative process be optional, because there will be some decisions (such as technical changes, or minor changes to specific aspects of plans) for which a collaborative process is excessive.

The main advantage of the collaborative process outlined in package 3, is the flexibility available to councils to design elements of the collaborative process to accommodate their regional circumstances. For example, flexibility for councils set the terms of reference and functions of collaborative stakeholder groups to reflect the diverse range of interests and values in the community, accommodate a range of iwi/Māori perspectives and Treaty settlement arrangements. Furthermore, depending on the nature of the decisions required, package 3 enables councils to have greater discretion, for example regarding the terms of reference for the collaborative stakeholder groups (i.e. to provide advice, or to draft a plan).

Officials consider that the flexibility provided in package 3 will make the collaborative planning process more likely to be taken up by councils than package 2 and will capitalise on emerging practice in some councils, where collaborative approaches are becoming widely accepted as good practice for dealing with contentious and complex resource management issues. The flexibility provided in package 3 is expected to enable plans to be developed and made operative in a more efficient and timely (objective 5) than package 2 which is highly prescriptive and may be expensive and impractical for some councils.

### **Implementation**

Cabinet has agreed that a discussion document outlining a strategy for water reform be developed for consultation in February 2013. One element of this strategy is an improved governance system. Feedback and comments received through the consultation process will inform further design of an improved governance system.

It is expected that an improved planning process for water be delivered in the 2013 RMA amendment legislation, for commencement in 2014. A guidance and support package for councils to implement an improved governance system is expected to be available at that time also.

### **Monitoring, evaluation and review**

This is an intermediate RIS and is not seeking final decisions on reforms to improve the governance system at this time. It is likely that the February 2013 discussion document will signal a formal review of implementation progress to occur alongside the NPS-FM review, which is scheduled for 2016.

Such a review will enable assessment of whether more significant changes to the freshwater governance system are justified, or whether some of the foundation measures need adjustment. Key issues to monitor include the effectiveness of central government leadership in improving the quality of decision making, and the uptake and effectiveness of the alternate planning process, including the effects of changes to appeal rights.